United Nations S/2003/701

Security Council

Distr.: General
11 July 2003

Original: English

Letter dated 9 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/442).

The Counter-Terrorism Committee has received the attached third report from Panama submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 7 July 2003 from the Permanent Representative of Panama to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

Further to your note S/AC.40/2002/MS/OC.220 of 4 April 2003, I have the honour to transmit to you herewith the reply of the Government of Panama to the questions submitted to this Mission. The reply enlarges upon the supplementary report submitted by Panama pursuant to Security Council resolution 1373 (2001) (see appendix).*

(*Signed*) Ramón A. **Morales Quijano**
Ambassador
Permanent Representative

* Attachments are on file with the Secretariat and are available for consultation.

Appendix

Supplementary report of Panama submitted to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001)

Implementation measures

1.1 The Counter-Terrorism Committee has agreed on further questions and comments for the consideration of the Government of Panama with regard to the implementation of the resolution, as set out in this section.

1.2 How does Panama propose to criminalize the wilful provision or collection of funds in its territory for purposes of terrorism as required by subparagraph 1 (b) of the resolution and article 2 of the Convention for the Suppression of the Financing of Terrorism? Could Panama please provide an outline of the relevant provisions proposed to be incorporated in this regard in the new bill?

The provision or collection of funds for the financing of terrorist acts are criminalized in the Penal Code as offences of unlawful association (offences against collective security) against the legal personality of the State.

For its part, the Council Cabinet, at its meeting on 11 June 2003, authorized the presentation to the Legislative Assembly of bill No. 163, which was submitted on 12 June by the Ministry of the Interior and Justice, Commission on Government, Justice and Constitutional Affairs. The bill adds articles to the Penal Code criminalizing the offence of financing of terrorism. The specific articles state:

> "**Article 264 (c)** Anyone who knowingly or intentionally finances, subsidizes, conceals or transfers money or assets for use in activities of terrorist groups, even without participating in such activities or without bringing them to fruition, shall be subject to 15 to 20 years' imprisonment."

The following articles have also been introduced:

> "**Article 264 (a)** Anyone who commits terrorist acts shall be subject to 15 to 20 years' imprisonment."

For the purposes of the Penal Code, terrorist acts are defined as physically eliminating a person, depriving a person of his or her freedom, or large-scale and indiscriminate destruction of property or persons on political, ideological, racist or religious grounds.

> "**Article 264 (b)** If such acts cause irreparable physical or mental harm, loss of a sense, organ or limb, impotence or loss of the ability to procreate, permanent visual impairment, facial or bodily disfigurement for life or permanent inability to work, the penalty shall be 10 to 12 years' imprisonment."

> "**Article 264 (d)** A sentence of 8 to 10 years' imprisonment shall be imposed on:
>
> a. Anyone who knowingly or intentionally encourages or assists in activities carried out by individuals or organized groups with the intention of performing terrorist acts, even without participating in such activities;

b. Anyone who conceals, shelters, accommodates or recruits persons to engage in terrorist acts or join groups for that purpose."

"**Article 264 (e)** Anyone who promotes or commits terrorist acts endangering the life or physical integrity of staff of embassies, missions or Government-accredited international delegations, or the headquarters, physical structures or property thereof, shall be subject to 10 to 15 years' imprisonment, without prejudice to any other penalties applicable under the criminal legislation."

"**Article 264 (f)** Anyone who is aware of the existence of persons or groups of persons preparing or helping to plan or implement terrorist acts, or who knows the whereabouts of internationally wanted terrorists and fails to report this fact to the national authorities, shall be subject to 5 to 10 years' imprisonment."

Act No. 41 of 2 October 2000 provides measures to prevent the crime of capital laundering. Article 3 of the Act adds article 389 to chapter VI, on capital laundering, and defines as an underlying crime the receipt, deposit, trading, conversion or transfer of money, securities, property or other financial resources, in the full knowledge that they are derived from activities related to terrorist acts. Offenders are subject to 5 to 12 years' imprisonment and a fine of 100 to 200 days.

1.3 The Counter-Terrorism Committee would be grateful to have an outline of the relevant provisions of the new bill that enable authorities in Panama to freeze funds, financial assets or economic resources of individuals and entities both resident and non-resident when suspected of having terrorist connections.

Although the bill does not actually provide for the freezing of funds of persons having terrorist connections, there are currently measures that can be adopted by the Panamanian authorities to freeze funds and financial resources of individuals and entities, resident and non-resident, having terrorist connections.

In accordance with established criminal procedure, these measures are implemented through a request ordering the seizure of funds and assets, issued either by a prosecutor or by a judge, as part of an investigation or judicial proceedings instituted for offences of terrorism, laundering of the proceeds of terrorism or financing of terrorism.

Under Executive Decree No. 78 of 5 June 2003, the Financial Analysis Unit for the Prevention of Capital Laundering and Financing of Terrorism has the power to submit the information directly to the Attorney General when it believes that the Office of the Public Prosecutor should launch an investigation. The Unit may also provide any assistance to facilitate the criminal or administrative investigations.

Act No. 41 of 2 October 2000 on capital laundering, which defines terrorism as an underlying crime, provides, in its final provisions, for the seizure of money, assets, securities or other economic resources connected with the offence of capital laundering.

1.4 What is Panama's definition of what constitutes "money laundering"? Does the Act provide any objective criteria for establishing what constitutes "suspected money laundering activities"?

Article 389 of Act No. 41 of 2 October 2000 defines the crime of "capital laundering". This concept is broader than that of "money laundering", as it covers

other activities in addition to money laundering. The intention is to ensure that no type of unlawful activity is omitted.

The definition of capital laundering is as follows:

Anyone who receives, deposits, trades in, converts or transfers money, securities, property or other financial resources, in the full knowledge that they are derived from activities related to drug trafficking, fraud, illicit arms trafficking, trafficking in persons, kidnapping, extortion, embezzlement, corruption of public servants, terrorist acts, theft or international trafficking in vehicles, as provided under Panamanian criminal law, with the aim of hiding or concealing their illegal origin or assisting in evading the legal consequences of such punishable acts shall be sentenced to 5 to 12 years' imprisonment and a fine of 100 to 200 days.

Under articles 1 and 1.1 of Act. No. 42 of 2 October 2000, all banks, trusts, exchange and remittance houses and natural or legal persons engaging in the exchange or transfer of money, savings and loans cooperatives, stock exchanges, stock brokerages and stock brokers are obliged properly to identify their clients.

For this purpose, use is made of objective benchmark criteria, certificates proving incorporation and validity and identification of officials, directors, proxies and legal representatives of such companies, so that the true owner or beneficiary, whether direct or indirect, may be documented and properly established.

Under the Act, the persons mentioned in article 1 must also submit periodic reports to the Unit through the respective oversight and monitoring agencies, carefully scrutinize any transactions that may be linked to capital laundering, and report them to the Unit.

Internal procedures must also be established for preventing capital laundering, staff must be trained to implement such procedures and records on transactions must be retained for at least five years.

Although it does not define "suspected money laundering activities", Act No. 42 does include the proviso that the institutions mentioned in article 1 must submit reports to the Financial Analysis Unit and/or require their clients, proxies or representatives to make the necessary reports to prevent capital laundering, especially with respect to:

a. Deposit or withdrawal of cash in amounts exceeding 10,000 (ten thousand) balboas or a series of transactions over a short period of time which, even though they are individually less than 10,000 (ten thousand) balboas, together exceed that amount.

b. Exchange of bills, lottery tickets, cheques, banker's drafts, travellers' cheques or payment orders or money orders in small denominations for others in large denominations, or vice versa, for an amount exceeding 10,000 (ten thousand) balboas.

c. Exchange of all kinds of cheques (including traveller's cheques and banker's drafts) and payment orders issued to the bearer, unendorsed and issued on the same date or over a short period of time and/or with the same drawer or drawers at the same location, for an amount exceeding 10,000 (ten thousand) balboas.

Furthermore, Agreement No. 9-2000 of the Superintendency of Banks of 23 October 2000 describes how to prevent the unlawful use of banking services.

The Agreement:

a. Establishes the obligation to identify clients both in computer systems and on paper;

b. Defines the client concept, which includes both natural and legal persons, whether they are direct or indirect clients;

c. Excludes interbank operations from the sphere of application of the Agreement;

d. Specifies detailed criteria for identifying clients and for reporting cash and quasi-cash transactions;

e. Sets out criteria for recognizing a series of transactions over a short period of time;

f. Establishes the scope of a bank, for the purposes of the Agreement;

g. Sets out the obligation to identify securities investors, brokers and intermediaries;

h. Obliges banks to establish a "profile" of clients with a contractual relationship characterized by trades for an amount exceeding 10,000 (ten thousand) balboas;

i. Establishes the obligation of banks to keep a regularly updated handbook on the "Know your client" policy;

j. Requires banks to keep transaction records related to former clients for at least five years;

k. Defines the criteria for identifying, registering and reporting suspicious transactions;

l. Provides examples of suspicious transactions;

m. Empowers the Superintendency of Banks to report to the Financial Analysis Unit suspicious transactions of which it may become aware during its bank inspection activities;

n. Prohibits the closure of accounts that have been the subject of a suspicious transaction report to the Unit during the three months following the reporting date;

o. Establishes banks' obligation to train staff in preventing the unlawful use of banking services;

p. Provides penalties for failure to comply with its provisions or with the instructions of the Superintendency of Banks;

q. Lists the National Banking Commission agreements repealed by the Agreement.

Agreement No. 9-2000 also provides many examples of behaviour and information regarded as suspicious, such as the following:

a. Businesses with financial statements that differ significantly from other businesses engaged in a similar activity;

b. Clients who appear reluctant to provide personal history when opening an account or who buy monetary instruments above the specified limit;

c. Companies which fail to provide complete information about the nature of their business, previous banking relationships, place of business, or names of directors and officials;

d. Transactions showing significant changes in money transfer patterns between correspondent banks;

e. Rapid increases in the size and frequency of cash deposits, without a corresponding decrease in non-cash deposits;

f. Deposits of funds into several accounts, generally in amounts under the reporting threshold, which are then consolidated into a key account and transferred out of the country;

g. Transfer of money or earned interest to another country without changing the currency; receipt of transfers and immediate purchase of monetary instruments to make payments to third parties.

It should also be noted that the Panama Superintendency of Banks has issued a number of circulars on this topic.

Circular 021-2000, for example, instructs banks to obtain from the FATF web site the "Guidance for Financial Institutions in Detecting Terrorist Financing", in order to comply with the provisions of Act No. 42 of October 2000.

Banks have also been instructed to study the web site of the Office of Foreign Assets Control (OFAC) in order to keep abreast of updates to the list of Special Designated Nationals and Blocked Persons (Circular 027-2002) and of OFAC data in order to take them into consideration before opening new accounts (Circular 031-2002).

The Superintendency of Banks also has Agreement No. 10-2000 on the compliance official, which provides guidelines for establishing a mandatory compliance programme, and appointing a compliance official whose duties include monitoring compliance by bank management and receiving reports of possible irregularities due to non-compliance with the law by other employees.

1.5 The Counter-Terrorism Committee would be grateful to have an outline of the relevant provisions of the preliminary bill referred to on page 8 of the supplementary report that propose to regulate alternative money transfer agencies.

Preliminary bill No. 162 regulating the operations of money transfer agencies was submitted on 10 June 2003 by the Commission on Commerce, Industry and Economic Affairs. It is presently awaiting approval by the President of the Republic.

Article 1 of the bill states that its provisions apply to natural or legal persons habitually engaged in money transfer operations, whether through funds transfer or remittance systems, offsetting of funds or any other method, inside or outside the country, to be known as money transfer agencies.

Excluded from the application of the bill are post offices, telegraph services, and banks, which are governed by the relevant legal provisions in force.

Those wishing to operate a money transfer agency must provide certain details, through their lawyers. These include the personal details and domicile of the applicant, the name and physical address of the company, and the amount of capital with which the business will operate (articles 1 and 2 of the bill).

All legal persons intending to operate a money transfer agency must request the necessary authorization from the Ministry of Commerce and Industry through the Department for Financial Companies.

1.6 Could Panama please explain what legal, administrative or other mechanisms it has in place to prevent the registration and operation of companies by terrorists or persons and entities linked to terrorists by misusing the liberal registration procedures in Panama and how the authorities are able to establish the beneficial owners of the companies registered in Panama?

Executive Decree No. 468 of 19 September 1994 "defining the obligations and establishing the responsibilities of the registered or resident agent of corporations" sets out the measures to be taken to protect the good name of Panamanian corporations by creating deterrents to prevent them from being used to commit offences such as drug trafficking, as well as money-laundering, of which terrorist financing is an underlying offence.

The Decree stipulates that a lawyer or law firm acting as resident agent of a Panamanian corporation must know the client and possess enough information to identify the client to the competent authorities if requested to do so.

Such information may be provided only at the request of an official of the Public Prosecutor's Office or of the judicial body competent to act in drug trafficking or money-laundering offences deriving from such criminal activity, under proceedings already under way in the Republic of Panama or under mutual legal assistance treaties.

If the resident agent provides the requested information, such action shall not be regarded as a violation of the confidential relationship between lawyer and client or as a breach of professional ethics, because the matter concerns the higher interest of the Republic of Panama.

Lawyers who refuse to provide the requested information without just cause shall be held in contempt.

Other ways of preventing terrorist-related businesses from operating are described in the information criteria issued by the Superintendency of Banks under article 4 of Agreement No. 9-2000, under which banks must:

1. Properly identify clients requesting any type of service, especially those holding demand or time deposit accounts, whether domestic or foreign, whether named or numbered — particularly accounts opened with amounts above 10,000 (ten thousand) balboas or the equivalent in foreign currency, in cash; banks must also properly identify clients using cheques (banker's drafts, travellers' cheques or other) and payment orders made out to the bearer, unendorsed and issued on or around the same date and/or by the same drawer

or drawers at the same location, for amounts exceeding 10,000 (ten thousand) balboas or the equivalent in foreign currency.

Banks must therefore:

a. Require, when the account is opened, the client's first name, last name, marital status, profession, trade or occupation, identity papers, nationality, domicile and residence;

b. Require that the client provide recommendations or references in order to open a demand or time deposit account;

c. In the case of persons resident abroad who are in Panama solely for the purpose of opening a demand or time deposit account, require evidence of the client's travel formalities as stamped in the travel document (port of entry stamp in the passport, for example);

d. Require the client to indicate whether he or she is acting as an intermediary for another person who is the true beneficiary of the operation and, if this is the case, properly to identify the beneficiary;

e. In the case of trusts and legal persons, including companies with registered or bearer shares, the bank must require the relevant documents certifying the incorporation and existence of the companies, as well as documents identifying officials, directors, proxies and legal representatives of such companies, so that the true account owner or beneficiary, whether direct or indirect, may be properly documented and established;

f. Keep written evidence on file of all measures taken to identify the client properly.

Article 5 of the Agreement, concerning the identity of those issuing securities, states:

In order to ensure that their transactions connected with the purchase and sale of securities in Panama or abroad on behalf of their clients are not performed with, or on the basis of, funds arising from the unlawful activities listed in article 1 of the present Agreement, whether to conceal the illegal origin of such funds or to ensure that they can be used by a particular person, all banks must have policies, procedures and systems in place for properly identifying investors, agents and intermediaries taking part in the transaction.

Moreover, article 1 of the Agreement, concerning ways to prevent the unlawful use of banking services, stipulates:

In order to ensure that transactions of banking services are not used to commit *the offence of capital laundering and are not performed with, or on the basis of, funds arising from unlawful activities connected with that offence, whether to conceal the illegal origin of such funds, or to ensure that they can be used by a particular person*, all banks must properly identify their clients and the origin of the resources used by them in their transactions with the bank, in both their files and computerized systems. [Emphasis supplied.]

1.7 How does Panama ensure that ships belonging to terrorists or their supporters are not fictitiously registered in Panama? How would Panama fulfil its responsibilities under the Rome Convention for the Suppression of Unlawful Acts against Maritime Safety and under bilateral maritime agreements? Are safeguards used on the Panamanian Seaman's Book and are they similar to those on passports?

We assume that by "fictitiously registered" ships the Committee is referring to the *unlawful use* of registered ships.

The open registry of ships in Panama is the responsibility of the Panama Maritime Authority (PMA), whose tasks include exclusive administration of the registry of ships and related actions and implementation and enforcement of national shipping laws and international conventions on maritime safety, maritime security, prevention and control of maritime pollution by ships and the usual functions of a port State and flag State, in accordance with the United Nations Convention on the Law of the Sea and the international conventions adopted by the International Maritime Organization and other international agencies to which Panama belongs.

Panama exercises actual control over its fleet through:

- Inspections and statutory certifications carried out by recognized organizations (classification agencies) duly authorized by PMA for Panamanian-registered ships and covering such questions as ships' seaworthiness, safety and telecommunications. These authorizations have been issued to companies including Det Norske Veritas, Bureau Veritas, Lloyd's Register of Shipping, China Classification Society and Germanischer Lloyd, among others;
- Annual maritime safety inspections carried out directly by PMA and covering such questions as ships' seaworthiness and technical flaws and corrective measures to be taken;
- Penalties imposed on offending ships by PMA;
- Direct administration by PMA, which contacts ship operators, owners, captains and agents involved in the ship's operation in order to ensure that they meet the minimum required standards;
- Investigation of shipping incidents involving Panamanian-registered ships.

These arrangements, which are common to any flag State, are supplemented by the control systems of a port State, which allow any State party to international conventions such as the International Convention for the Safety of Life at Sea (SOLAS), the Convention on the International Regulations for Preventing Collisions at Sea (COLREG), the International Convention on Load Lines, the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) to inspect ships flying a foreign flag that put into their ports in order to determine their seaworthiness and safety.

One of the first measures taken by PMA was to begin, in 1998, to modernize the registration system, taking into account the needs of users and the current state of maritime safety within the Panamanian fleet.

The reports submitted by international agencies, private entities, port States, associations and trade unions involved in maritime activity has shown that the

popularity of the Panamanian shipping registry has not diminished, despite the current proliferation of other open registries, the requirements of globalization, the strict controls imposed by port States, and the constant change in shipping legislation. In response to events representing a threat to maritime safety, major steps have been taken to:

1. Modernize and systematize (creation of a database) all services provided by the Panamanian shipping registry to the maritime community, in order to speed up and securitize the documentation service provided to owners, ships and seafarers;

2. Continue to integrate the administration of the Panamanian merchant navy into a system of high-quality oversight and regulation with respect to the registration and supervision of shipping and maritime safety, the documentation of seafarers, the prevention of pollution and the investigation and prevention of accidents.

3. Extend coverage of the annual maritime safety inspection programme in order to streamline efforts to verify the fleet's seaworthiness, age and detention rate, since a high detention rate harms Panama's image, increases the number of inspections by other States and is detrimental to shipping because of the high costs generated by detentions for non-compliance with national and international regulations;

4. Increase Panamanian technical skills and service capabilities, so that output is not limited to the issuing of documents, but also includes technical advice and maritime safety services in matters incidentally related to shipping, such as provision of life rafts and technical equipment; collection of waste, hydrocarbons and other pollutants; rescue services, telecommunication, technical certificates, maritime security, prevention of document forgery, piracy, etc.;

5. Participate actively and fully in international committees, agencies and conferences, in Panama's role as a leading registry, and interact with other maritime authorities and entities specializing in merchant shipping.

One of the areas in which significant changes have been made over recent years is the documentation of ships' crew members.

This area was originally regulated by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78) adopted by the International Maritime Organization in 1978.

Broadly speaking, the STCW Convention stated that maritime authorities were responsible for certifying the suitability and skills of seafarers on board their ships by issuing, among other documents, a temporary certificate of competency, valid for one year, and a standard certificate of competency, valid for five years.

Although the system of training and certification established under the Convention included arrangements for testing skills and performing generic documentation checks, it did not impose a clear obligation on maritime authorities to accredit their training and certification mechanisms, be accountable and ensure that the certifications issued in fact meant that an individual was suitable for the task. Nor did the Convention establish effective methods for refresher training.

In 1995, following a series of maritime disasters caused by human error, and because certificates of competency were being obtained illegally by persons who were unsuitable for their duties, IMO called for major changes to the 1978 STCW Convention, requiring for the first time that each IMO member State submit for its approval a report setting out in detail how the new rules were being implemented by its own maritime authorities.

Any State failing to comply with this requirement would be excluded from a "White List" and its certificates of competency would therefore not be recognized by any maritime authority or accepted by any port State control during its inspections. In short, if a State were to be excluded from the "White List", its merchant fleet would be paralysed.

In December 2000, IMO published the "White List", which included the Republic of Panama.

Panama's continued presence on the List, as well as that of the other member States, depends on its ability to implement the new international rules. Fundamental changes have therefore been introduced, which may be summarized as follows:

- Abolition of the examination system for promotion to or selection for a certain position;
- Abolition of the one-year temporary certificate of competency;
- Introduction of a system of data management and ongoing documentation monitoring by all State parties;
- Establishment of effective controls to prevent forgery of certificates;
- Creation of the provisional certificate recognizing qualifications, valid for three months, and the certificate recognizing qualification, valid for five years, for seafarers who are not Panamanian nationals;
- Monitoring of the training system of each State and training centres; and
- Introduction of mandatory training and refresher courses.

Panama's obligations as a flag State are not limited to certification or documentation. It must also monitor compliance with the regulations and audit training centres and centres responsible for issuing seafarers' documents.

In order to optimize the service provided to the maritime community, PMA has the following technical units to support the documentation process:

1. The General Directorate of Seafarers, which enforces legal norms concerning education, training, certification and watchkeeping for seafarers, as well as strict compliance with staffing regulations for Panamanian-registered ships designed to ensure safety of shipping, and inspects working and living conditions and accommodation for crew members of such ships.
2. The regional documentation centres in London, New York and Manila, which are responsible for analysing documentation provided by users with applications submitted at the Merchant Navy Consulates of the Republic of Panama.

At present, the Special Merchant Navy Consulates of Panama abroad are responsible for accepting documentation and issuing provisional certificates. This

documentation is then submitted to the Regional Documentation Centre, which reviews and analyses them for the accreditation process.

It is noteworthy that a Panamanian-registered ship must be subject to the International Safety Management Code introduced under the International Convention for the Safety of Life at Sea (SOLAS). This Code requires that the company operating the ship be identified, so that the company and the ship are subject to quality management standards. This permits definite identification of the company responsible for operating the ship, in order to determine accountability.

With respect to public safety, Panama has taken major steps to ensure that its fleet is not used for unlawful purposes. Since 1990, Panama has had a joint arrangement with the United States. Authorized by an exchange of notes between the foreign ministries of the two countries, this arrangement allows the United States Coast Guard to board Panamanian-registered ships when there is reason to suspect that they are being used for international drug trafficking.

This arrangement was agreed in implementation of the Geneva Convention for the Suppression of Unlawful Traffic in Dangerous Drugs. Subsequently, in 2001, a supplementary agreement was concluded between Panama's Ministry of the Interior and Justice and the United States Coast Guard to establish a programme of on-board observers. The intention was to introduce an oversight and monitoring mechanism with a view to preventing illegal activities in such areas as drug trafficking, arms trafficking and smuggling on board ships.

In 2002 PMA signed a joint declaration with the United States Coast Guard, under which the two institutions undertook to strengthen cooperation between their respective maritime authorities; to promote cooperation between those authorities, as well as between other ministries or Government agencies involved in maritime safety, maritime security and security of the marine environment; to develop and implement detailed initiatives in maritime safety, maritime security and protection of the marine environment in fulfilment of international agreements; and to promote the sharing of information and training materials that will enable the two authorities to work effectively together.

Other measures include ratification of the Rome Convention for the Suppression of Unlawful Acts against Maritime Safety. Although this Convention has not yet been translated into national regulations, a high-level commission has been set up with a view to incorporating its contents into Panama's legislation. However, Panama currently has legal mechanisms in place which allow the authorities to penalize mutatis mutandis certain types of conduct defined in the Convention, as described in the comments on this Convention in paragraph 1.10 below.

Panama has also ratified the Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, both of 10 March 1988.

The objective of these two instruments is to combat unlawful acts against maritime safety and the safety of fixed platforms.

The provisions notably stipulate the following:

a. The Convention does not apply to warships or to ships owned or operated by a State when being used as naval auxiliaries or for customs or police purposes, or to ships that have been withdrawn from navigation or laid up.

b. The Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

c. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in the Convention, which include:

   i. Seizing or exercising control over the ship by force or threat thereof or any other form of intimidation;

   ii. Performing an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

   iii. Destroying a ship or causing damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or

   iv. Destroying or seriously damaging maritime navigational facilities or seriously interfering with their operation, if any such act is likely to endanger the safe navigation of a ship.

d. The offences set out in the Convention shall be deemed to be included as extraditable offences.

It should be noted that, following the events of September 2001 in New York, the maritime community moved to adopt new legislation to introduce controls over shipping fleets in an effort to avoid a repetition of those events.

Under Act No. 7 of 27 October 1977, the Republic of Panama ratified the International Convention for the Safety of Life at Sea (SOLAS); the 1978 amendments thereto were also ratified, under Act No. 12 of 9 November 1981. At a Diplomatic Conference held at the International Maritime Organization in London in December 2002, Contracting Governments to the 1974 SOLAS Convention adopted the Protocol amending the Convention, which introduced new rules to enhance maritime security on board ships and in port facilities, including the International Ship and Port Facility Security Code (ISPS Code).

The ISPS Code, which will enter into force on 1 July 2004, is designed to establish an international framework to facilitate cooperation between Contracting Governments to the SOLAS Convention, government agencies, local authorities, and shipping and port sectors.

The ISPS Code is designed to detect threats to security and prevent events affecting the security of ships or port facilities used for international trade; define the functions and responsibilities of the aforementioned subjects at the national and international levels, with a view to guaranteeing maritime security; guarantee timely and effective gathering and sharing of information related to security; provide a methodology for carrying out vulnerability assessments so that plans and procedures will be devised for reacting to changes in the level of security; and inspire confidence that suitable and proportional maritime security measures are in place.

In order to achieve its objectives, the Code provides a non-exhaustive list of functional requirements. For example, Contracting Governments are required to gather and evaluate information about threats to security and share it with the Contracting Governments concerned; request updated communication protocols for ships and port facilities; prevent unauthorized access to ships, port facilities and their restricted areas; prevent introduction of unauthorized weapons and incendiary or explosive materials on board ships or in port facilities; introduce methods for raising the alarm in the event of a threat to maritime security or an event affecting it; require security plans for ships and port facilities, based on vulnerability assessments; and provide training and conduct drills with a view to ensuring that employees fully understand security plans and procedures.

The Republic of Panama operates the world's largest open shipping registry, and therefore has a number of major port facilities along its coasts, providing services to the international maritime community. It also administers the Panama Canal, which is an invaluable asset to international maritime traffic. It has therefore vigorously promoted implementation of the ISPS guidelines. Accordingly, under Board of Directors resolution No. 003-2003 of 25 February 2003, the Panamanian Maritime Authority created the Department of Maritime Security, in the Authority's Administration Office.

The functions of the new Department include evaluating and approving, with the sanction of the Administration Office, applications from companies wishing to operate as a Recognized Security Organization (RSO) in order to carry out, on behalf of PMA, functions delegated to them under the ISPS Code.

Resolution No. 140-2003 of 15 May 2003 of the PMA Administrator approved guidelines for implementing the ISPS Code, including the requirements to be met by each applicant company before PMA can recognize it as an RSO. This new legislation is currently being implemented with the assistance of State public security bodies, ships, owners, seafarers, port operators and shipping agents.

The Authority is also following up on meetings to develop standards linked to this new legislation, which include, among other factors, guidelines on operating ships, inspecting ships, dealing with seafarers in ports, documenting seafarers, etc.

The Authority recently initiated consultations on important security requirements for the handling of documentation, with a view to incorporating more effective controls into its seafarer and shipping documents. These controls might include bar coding, digital fingerprinting, security marks, etc. This project is compatible with the new specifications contained in the Seafarers' Identity Documents Convention approved at the recent International Labour Conference of the International Labour Organization in Geneva.

1.8 Effective implementation of subparagraph 2 (a) requires States to suppress recruitment to terrorist groups either within or outside the country and Panama has stated in its supplementary report that currently there is no penal provision punishing the recruitment of members to terrorist groups. The Counter-Terrorism Committee would be obliged to know how Panama proposes to fill this gap in its current penal laws.

Article 264 (d) of bill No. 163 states:

"A sentence of 8 to 10 years' imprisonment shall be imposed on:

a. Anyone who knowingly or intentionally encourages or assists in activities carried out by individuals or organized groups with the intention of performing terrorist acts, even without participating in such activities;

b. Anyone who conceals, shelters, accommodates or recruits persons to engage in terrorist acts or join groups for that purpose." (Emphasis supplied.]

1.9 In regard to providing assistance in judicial proceedings and criminal matters, how does Panama deal with the request of a country with which it has no bilateral treaty on mutual legal assistance?

The Government of Panama is obliged to comply with the requirements and other formalities established by law regarding the sharing of information with foreign authorities concerning criminal matters. Thus, the Judicial Code lays down the procedure for dealing with petitions and letters rogatory in the matter of requests for international assistance.

Foreign authorities must request information on criminal matters through the diplomatic channel — in other words, through the Foreign Ministry, which in turn transmits the request to the Supreme Court of Justice.

On the other hand, in the case of authorities of a country that is party to a convention or treaty on international cooperation, those authorities must submit their request directly to the Supreme Court of Justice — in other words, through the legal channel.

In both cases, the request must be verified by Chamber IV of the Court (Sala de Negocios Generales). Chamber IV must verify that the petition or letter rogatory is valid, i.e., that it does not violate public policy and meets technical requirements.

Lastly, such information may be requested under procedures established for that purpose in treaties on mutual legal assistance or memoranda of understanding concluded by the Panamanian authorities with their foreign counterparts.

Requests from countries with which Panama has not concluded treaties on mutual legal assistance are covered by the rules set out in the 1961 Vienna Convention, ratified by Act No. 65 of 4 February 1963.

1.10 It is stated in the first report of Panama that, as per article 4 of the National Constitution, Conventions and Protocols to which Panama is a party are binding and require strict compliance. Please indicate what penalties have been prescribed for the offences which are required to be established under the conventions and protocols relating to terrorism to which Panama is a party.

The conventions and protocols relating to terrorism to which Panama is a party and the penalties prescribed for their infringement are described below:

– **Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 14 September 1963)**

Articles 243 to 245 of chapter IV of our Penal Code establish penalties for piracy against a ship or the persons on board. It also applies to anyone who assists those committing an act of piracy to hand over a ship, its cargo or items belonging to the crew; anyone who by threat or force attempts to prevent the commander or crew from defending the ship against hijackers; anyone who equips a vessel for use in acts of piracy; and anyone who knowingly deals with or assist hijackers and who by force or threat seizes control of an aircraft. A penalty is established for anyone who by force or threat seizes control of an aircraft.

– **Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (Executive Decree No. 13 of 27 January 1972)**

Article 184 (a) of our Penal Code, contained in title IV on offences against property, in Chapter I (Theft) provides penalties of three to six years' imprisonment for anyone who seizes an automobile, maritime vessel, aircraft or river vessel, and of 5 to 10 years' imprisonment if the offence is committed by two or more persons or if the intention of the offence is to remove the vehicle outside the national territory.

– **Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September 1971 (Executive Decree No. 59 of 16 March 1972)**

Article 238 of chapter II of the Penal Code of the Republic of Panama (Offences against means of transportation and communication) stipulates that a sentence of 1 to 6 years' imprisonment will be imposed on anyone who performs any action endangering the safety of means of land or maritime transportation. If such an act results in a collision, derailment, shipwreck, beaching, plane crash or other serious accident, the penalty will be 6 to 10 years' imprisonment. If the disaster causes harm to someone, the penalty will be 6 to 15 years' imprisonment; if it causes someone's death, the penalty shall be 8 to 18 years' imprisonment.

– **Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done in Rome on 10 March 1988 (Act No. 21 of 9 May 2002)**

Persons who commit acts that may infringe the provisions of this Convention will be punished under articles 184 (a) and 238 of the Penal Code, which are described above.

– **Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 24 February 1988 (Act No. 6 of 3 January 1996)**

In title IV of the Penal Code, on offences against property, chapter VIII (Damage) stipulates that penalties shall be imposed on anyone who destroys, renders unusable, breaks or in any way damages movable or immovable property belonging to another person and that on aggravated penalty of 6 months' to two years' imprisonment and a fine of 50 to 100 days will be imposed if the offence involves "destruction of or serious damage to residences or individual offices in public

buildings or buildings intended for public use or for any form of worship, in military buildings or installations, ships or aircraft owned by the State, public monuments or cemeteries, or property of scientific, cultural, historic or artistic value" (article 201, paragraph 3).

– **Organization of American States (OAS) Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance (Washington, D.C., 2 February 1971)**

With respect to the offences of extortion and kidnapping, article 188 (a) of chapter III of the Penal Code states that anyone who abducts a person in order to obtain as ransom from the abductee or anyone else money, property or documents with any kind of legal effect for himself or for other persons designated by him will be subject to 5 to 12 years' imprisonment. It also describes 12 different situations. In the first, anyone who kidnaps a public servant or a person enjoying immunity recognized under international law is deemed to have committed an offence and is liable to the appropriate penalty. In the second situation, anyone who abducts a guest of the Panamanian Government or of any public entity or a person attending a meeting, symposium, seminar or other event organized by any State body is deemed to have committed an offence and is liable to the appropriate penalty.

– **Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the United Nations General Assembly on 14 December 1973 (Act No. 8 of 29 December 1979)**

Articles 314 to 316 of chapter III of the Penal Code (Offences against the international community) provide penalties for violation of the immunity of the head or a representative of a foreign State and offences against the dignity or office of such persons, when they are on Panamanian territory. Offences against representatives of foreign States accredited to the Government of Panama are also liable to the same penalties imposed for such crimes when they are committed against Panamanian public servants. Article 132, paragraph 8, of the Penal Code describes this as an aggravating circumstance to the offence of homicide, which in turn incurs a sentence of 12 to 20 years' imprisonment.

– **International Convention against the Taking of Hostages, adopted by the United Nations General Assembly on 17 December 1979 (Act No. 9 of 6 November 1981)**

Article 151 of chapter III of the Penal Code (Crimes against individual freedom) states that a sentence of 6 months' to 3 years' imprisonment will be imposed on anyone who unlawfully deprives another person of his or her freedom. If the offence under article 151 is committed using threats, cruelty or deceit, or with intent to obtain revenge or profit, or if the offence results in serious damage to the health or property of the victim, such action will be regarded as an aggravating circumstance and the sentence will be 2 to 6 years' imprisonment.

– **International Convention for the Suppression of Terrorist Bombings, opened for signature in New York on 12 January 1998 (Act No. 89 of 15 December 1998)**

Title VII of the Penal Code (Offences against collective security), and specifically chapter I (Fire, flood and other offences endangering the public), states in article 232 that a sentence of 3 to 8 years' imprisonment will be imposed on anyone who through fire or explosion creates a public danger to property or persons. There are two aggravating circumstances for this offence: the first provides for a penalty of 4 to 12 years' imprisonment in the event of fire, explosion or destruction of property of scientific, artistic, historic, religious, military or economic interest or of interest to public security, or in the event that someone is in danger or dies; the second provides a penalty of 8 to 18 years' imprisonment if the action is the immediate cause of someone's death.

In the same way, article 237 provides a sentence of 2 to 6 years' imprisonment for anyone who provides, manufactures, acquires, steals or possesses bombs or explosive, flammable, asphyxiating or toxic substances or materials designed for use in an attack on the security of the State.

– **International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on 9 December 1999 (Act No. 89 of 15 December 1998)**

With the entry into force of the preliminary bill, covering the financing of terrorism, there will be legal justification for penalizing this activity, in accordance with the provisions of article 264 (a) of the aforementioned preliminary bill.

– **Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991)**

– **Convention on the Physical Protection of Nuclear Material, signed in Vienna on 3 March 1980 (Act No. 103 of 30 December 1998)**

– **Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done in Rome on 10 March 1988 (Act No. 21 of 9 May 2002)**

1.11 The Counter-Terrorism Committee is aware that Panama may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The Counter-Terrorism Committee would be content to receive a copy of any such report or questionnaire as part of Panama's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373.

The report submitted to the Financial Action Task Force on Money Laundering (FATF) by the Panamanian Government addresses points of interest with regard to the implementation of resolution 1373. It addresses the freezing of assets, financing of terrorism and other topics related to terrorism. As requested, a copy of that report is attached to the present report.

Assistance and guidance

2.4 At this stage the Counter-Terrorism Committee will be focusing on requests for assistance that relate to "Stage A" matters. However, the assistance to be provided by one State to another on any aspect of the implementation of the resolution is a matter for agreement between them. The Counter-Terrorism Committee would be grateful to be kept informed of any such arrangements and on their outcome.

"Stage A" matters may be summarized under two priority headings:

a. States must have legislation in place covering all aspects of the resolution and be making preparations to ratify the 12 international conventions and protocols related to terrorism as soon as possible; and

b. States must have an effective executive machinery for preventing and suppressing the financing of terrorist acts.

Panama has already expressed its interest in receiving assistance with procedures for regulating and, in particular, detecting alternative remittance systems.

As mentioned in the present report, Panama already has a bill, which is now only awaiting approval by the President. However, Panama is extremely interested in having its officials trained to identify terrorist activities and related offences.

Panama would be most interested in receiving assistance in any areas offered by the Counter-Terrorism Committee (customs, extradition and financial laws, trafficking in illegal weapons, immigration, drafting and implementation of legislation).

We are limited by the fact that we lack the funds to send our experts abroad for training. It would also at this time be difficult for us to pay for technical experts from other countries to come to Panama.

Panama would therefore be very interested in receiving any assistance with training in the area of counter-terrorism, which is of vital importance to our Government, notwithstanding our financial limitations.